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Supreme Court, U.S.  
**FILED**

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**In The Supreme Court of the United States**

**No.**

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**KENNETH L. SMITH, PETITIONER**

**v.**

**HON. MARY J. MULLARKEY, ET AL.**

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE COLORADO SUPREME COURT*

---

Kenneth L. Smith, pro se  
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Golden, Colorado 80401  
Tel: (303) 526-5451  
Cell: (303) 587-1536

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## **QUESTIONS PRESENTED FOR REVIEW**

Can a judge with a direct, personal, and substantial pecuniary interest in a case decide an appeal without violating a litigant's First and Fourteenth Amendment due process rights and/or right of access to the courts in a case where eighteen other judges who are independent with respect to the matter are authorized by statute to hear it?

Did the Colorado trial court err in declining jurisdiction over damage claims brought pursuant to 42 U.S.C. § 1983 and facial constitutional challenges grounded in federal law to a statutory regulation promulgated by an instrumentality of the state?

Do the Due Process and/or Equal Protection Clauses of the Fifth and Fourteenth Amendments require lower court judges to follow the authoritative pronouncements of this and other superior courts, or do they only have to follow precedent when it takes them where they want to go?

## **LIST OF OTHER PARTIES TO THE PROCEEDING**

MARY J. MULLARKEY,  
REBECCA LOVE KOURLIS,  
GREGORY J. HOBBS, JR.,  
ALEX J. MARTINEZ,  
MICHAEL L. BENDER,  
and NANCY E. RICE, both personally and in their  
representative capacities as justices of the  
COLORADO SUPREME COURT,  
GREGORY KELLUM SCOTT,  
in his personal capacity only,  
NATHAN B. COATS,  
in his representative capacity as a justice of the  
Colorado Supreme Court,  
ALAN K. OGDEN,  
SUSAN B. HARGLEROD,  
SHARI FRAUSTO,  
LES WOODWARD,  
CARLOS SAMOUR,  
DORIS G. KAPLAN,  
GARY JACKSON,  
JAMES COYLE III,  
LINDA DONNELLY,  
and MELANIE BACKES, et al., both personally and  
in their representative capacities as agents of the  
COLORADO BOARD OF LAW EXAMINERS, and  
JOHN DOES 1-9.

The "Does" have not been identified at this time, as this is an appeal from a summary dismissal on putative grounds of a lack of subject-matter jurisdiction.

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## **OPINIONS BELOW**

The opinion of the Colorado Supreme Court is reported at 121 P.3d 890. The memorandum opinion of the state district court affirming defendants' motion to dismiss is not reported.

## **JURISDICTION**

This matter comes before the Court upon an affirmance of a dismissal of claims grounded in federal law by a state district court of general jurisdiction on a putative lack of subject matter jurisdiction by the justices of the Colorado Supreme Court, six of whom were properly named as defendants in their individual capacity.

The original judgment for which Petitioner is seeking review was entered on or about October 17, 2005; as such, this petition is considered as timely filed when mailed on or before January 15, 2005. (This corrected copy, submitted on or before February 14, 2006, pursuant to this Court's letter of December 16, 2005, is thus considered timely filed). However, if as Petitioner maintains (for reasons stated in Part I of the brief), the judgment is void under Colorado law for want of jurisdiction, no true judgment has been entered, and this petition is timely by definition.

Petitioner relies both on this Court's general authority under 28 U.S.C. § 1651 to issue writs and/or 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED IN THIS CASE

### **Federal:**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. *U.S. Const., art. VI, cl. 2.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. *U.S. Const., amend. I.*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make and enforce any law which shall abridge the privileges or immunities of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. amend. XIV, § 1.*

### **Colorado:**

The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which